

HOUSE BILL 3537
By McMillan

AN ACT to amend Tennessee Code Annotated, Title 54,
Chapter 5, Part 1, relative to retainage.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 54-5-121 is amended by deleting that section in its entirety.

SECTION 2. Tennessee Code Annotated, Section 54-5-122 is amended by deleting that section in its entirety and by substituting instead the following:

Section 54-5-122

(a) The department may close a project after the following has occurred:

- (1) The department shall provide thirty (30) days notice in some newspaper published in the county where the work is done, if there is a newspaper published there, and is not, in a newspaper in an adjoining county, that final settlement is about to be made and notifying all claimants to file notice of their claims with the department and the contractor's surety. The period for filing a notice of claim shall not be less than thirty (30) days after the last published notice. No notice of claim shall be valid unless it is verified by oath and filed after the publication of the first notice; and
- (2) The contractor shall furnish evidence to satisfy the department that all the material used by the contractor, its subcontractor or its agents has been fully paid for and all laborers and other employees working for the contractor, its subcontractors or its agents have been fully paid.

SECTION 3. Tennessee Code Annotated, Section 54-5-123(a) is amended by deleting that section in its entirety and by substituting instead the following:

Section 54-5-123(a)

- (a) If the department is holding any funds due the contractor, then to the extent the department is holding said funds, the department shall withhold from the contractor a sum sufficient to pay all claims of which notice is filed with the department, to allow claimants to sue and prove their claims against the contractor or its agent, in some court of competent jurisdiction. In the event a civil action is brought against the contractor by any claimant within sixty (60) days from the day of the last advertising, the department shall pay the amount of the claim into court from any funds of contractor the department is holding, if any. But in all cases where civil actions are not brought within the period of sixty (60) days, the department shall pay any sums being held by the department, if any, to the contractor. No civil action shall be valid unless it is filed after the filing of a notice of claim with the department in accordance with Section 54-5-122.

SECTION 4. Tennessee Code Annotated, Subsection 54-5-124(a) is amended by adding the following sentence at the end of the subsection:

“In the event that the department is holding no sums due contractor or upon payment of the amount specified in subparagraph (b), the commissioner shall be dismissed as a party upon request by commissioner.”

SECTION 5. Tennessee Code Annotated, Section 54-5-124, is amended by deleting subsection (b) in its entirety and substituting instead the following:

- (b) When a civil action has been properly brought, in the event the department is holding any amount due contractor, said amount or the amount of the claim, whichever is less, shall be paid into court.

SECTION 6. Tennessee Code Annotated, Section 54-5-138 is amended by deleting subsection (c) in its entirety.

SECTION 7. This act shall take effect on August 1, 2005, the public welfare requirin